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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 143.

AUGUST G. REETZ, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED JULY 25, 1901.

(18,236.)

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1 *Complaint.*

STATE OF MICHIGAN, } ss:
County of Muskegon, }

The complaint, on oath and in writing, of Vincent O. Clinger taken and made before me, James E. Sullivan a justice of the peace of the city of Muskegon in said county, upon the 2nd day of November A. D. 1900, who being duly sworn says that heretofore, to wit: on the first day of November A. D. 1900, at the city of Muskegon, and in the county aforesaid, one, August G. Reetz of said county did practice medicine in this State at to wit: the city and county of Muskegon aforesaid, without first complying with the provisions of act number 237 of the Public Acts of the State of Michigan of 1899, being an act entitled, "An act to provide for the examination, regulation, licensing and registration of physicians and surgeons, and for the punishment of offenders against this act, and to repeal acts and parts of acts in conflict therewith," in that the said August G. Reetz then and there did practice medicine at the time and place aforesaid without having received a certificate of registration from the board of registration in medicine of the State of Michigan, and without having filed the same, or a certified copy thereof, with the county clerk in the county where he, the said August G. Reetz did then and there reside, to wit: with the county clerk of said Muskegon county, the said August G. Reetz then and there not being a commissioned surgeon of the United States Army, Navy or Marine Hospital Service in actual performance of his official duty, and the said August G. Reetz then and there not being a regularly licensed physician or surgeon from out of this State in actual consultation with physicians of this State, and the said August G. Reetz then and there not being a dentist in the legitimate practice of his profession, and the said August G. Reetz, then and there not being a temporary assistant in cases of emergency, and the said August G. Reetz then and there not being engaged in the domestic administration of family medicines, and the said August G.
2 Reetz then and there not being a legally qualified osteopath engaged in the practice of osteopathy under the provisions of act number 78 of the Public Acts of the State of Michigan of 1897 regulating and licensing the practice of osteopathy in the State of Michigan, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan, wherefore the said Vincent O. Clinger pray-that the said August G. Reetz may be apprehended, and held to answer this complaint, and further dealt with in relation to the same as law and justice may require.

VINCENT O. CLINGER.

Taken, subscribed and sworn to before me the day and year first above written.

JAMES E. SULLIVAN,
Justice of the Peace.

3 *Criminal Warrant.*

STATE OF MICHIGAN, } ss:
County of Muskegon, }

To the sheriff or any constable of said county, Greeting:

Whereas, Vincent O. Clinger hath this day made complaint, in writing and on oath, to me, James E. Sullivan, a justice of the peace of the city of Muskegon, in said county, that heretofore, to wit: on the first day of November, A. D. 1900, at the city of Muskegon in the county aforesaid, one, August G. Reetz, of said county, did practice medicine in this State at to wit: the city and county of Muskegon, aforesaid, without first complying with the provisions of act number 237 of the Public Acts of the State of Michigan of 1899, being an act entitled "An act to provide for the examination, regulation, licensing and registration of physicians and surgeons and for the punishment of offenders against this act, and to repeal all acts and parts of acts in conflict therewith," in that the said August G. Reetz, then and there did practice medicine at the time and place aforesaid, without having received a certificate of registration from the board of registration in medicine, of the State of Michigan, and without having filed the same or a certified copy thereof, with the county clerk in the county where he, the said August G. Reetz did then and there reside, to wit: with the county clerk of said Muskegon county, the said August G. Reetz then and there not being a commissioned surgeon of the United States Army, Navy or Marine Hospital Service in actual performance of his official duty, and the said August G. Reetz then and there not being a regularly licensed physician or surgeon from out of this State, in actual consultation with physicians of this State, and the said August G. Reetz then and there not being a dentist in the legitimate practice of his profession and the said August G. Reetz then and there not being a temporary assistant in cases of emergency, and the said August G. Reetz then and there not being engaged in the domestic administration of family medicines, and the said August G. Reetz then and there not being a legally qualified osteopath engaged in the practice of osteopathy under the provisions of act number 78 of the Public Acts of the State of Michigan of 1897 regulating and licensing the practice of osteopathy in the State of Michigan.

And whereas, on examination, on oath, of the said Vincent O. Clinger, by me, the said justice of the peace, it appears to me, the said justice of the peace, that said offense has been committed, and there is just cause to suspect the said August G. Reetz to have been guilty thereof; therefore, in the name of the People of the State of Michigan, you, and each of you, are hereby commanded forthwith to arrest the said August G. Reetz and bring him before me, the said justice of the peace, to be dealt with according to law.

And you are further commanded, in the name of the People of the State of Michigan, to summon —— —— of —— to appear before me, the said —— —— when and where you shall have the said

accused part- to testify their knowledge on behalf of said People, touching the matter of said complaint.

Given under my hand and seal, at the city of Muskegon, in said county, on the 2nd day of November, A. D. 1900.

JAMES E. SULLIVAN,
Justice of the Peace.

4 *Return of Justice of the Peace.*

STATE OF MICHIGAN, } ss:
Muskegon County, }

I, the undersigned James E. Sullivan one of the justices of the peace in and for said county, do hereby certify and return to the circuit court of the said county of Muskegon that on the second day of November, A. D. 1900, one Vincent O. Clinger of Muskegon made complaint to me that August G. Reetz did on the first day of November A. D. 1900 at the city of Muskegon in said county *did* practice medicine in this State to wit: at the city and county of Muskegon aforesaid without first complying with the provisions of act number 237 of the Public Acts of Michigan of 1899 etc. whereupon I, the said justice, did examine the said complainant, Vincent O. Clinger, on oath, which said complaint was reduced by me to writing and subscribed by the said Vincent O. Clinger, and it appearing to me, the said justice, that said offense had been committed, I issued a warrant directed to a sheriff or any constable of said county and commanding such sheriff or constable forthwith to arrest the said August G. Reetz and bring him before me to be dealt with according to the law; which said warrant was on the same day returned to me by V. O. Clinger, deputy sheriff of said county, with the body of said August G. Reetz in his custody. Whereupon the said August G. Reetz by his attorney F. W. Cook then present in court waived the reading of the charge contained in said warrant and stood mute, whereupon I entered a plea of not guilty for him. Afterwards said cause was adjourned from time to time by the agreement of said accused until the 12th day of November, 1900, at two o'clock in the afternoon before me at my office in the city of Muskegon at which time and place there appeared before me the said accused August G. Reetz in person and also his attorney F. W. Cook and Charles B. Cross, prosecuting attorney of said county also appeared in person before me, thereupon the accused August G. Reetz expressly waived a trial by jury before me, and announcing himself ready for trial, I proceeded to the trial of said cause without a
5 jury. V. O. Clinger was sworn and testified as a witness for and on behalf of the People of said State, and August G. Reetz, said accused, was sworn and testified as a witness for and in his own behalf. After hearing the proofs and allegations in the cause which were delivered in public and in the presence and hearing of said accused, and the cause having been submitted to me, I found the said August G. Reetz guilty and convicted him of the offense charged in said warrant; whereupon I, the said justice, did

render judgment that the said August G. Reetz should pay a fine of fifty dollars, within one hour and that in default of the payment of said fine within said time that he should be imprisoned in the county jail of said county of Muskegon for the period of seventy days from and including the 12th day of November, A. D. 1900, and thereupon the said August G. Reetz appealed from the said judgment and sentence to the circuit court for the said county of Muskegon and did then and there on the 12th day of November, A. D. 1900 enter in a recognizance before me as required by law, himself in the sum of one hundred dollars, with surety approved by me, in the sum of one hundred dollars, conditioned that the said August G. Reetz should appear before the circuit court of said county on the first day of the next term thereof and prosecute his appeal at said term to effect and abide the order and judgment of said court, and thereupon I discharged the said August G. Reetz.

And I do further certify and return that the said recognizance together with the complaint and warrant and testimony taken by me in said cause, is also annexed to this my return to said appeal and herewith returned to said circuit court.

Given under my hand in the city of Muskegon in said county on this 13th day of November, A. D. 1900.

JAMES E. SULLIVAN,
Justice of the Peace.

6 *Recognizance.*

STATE OF MICHIGAN, } ss:
County of Muskegon, }

Be it remembered that on this 12th day of November, 1900, August G. Reetz and Samuel Rosenthal both of the city and county of Muskegon personally came before me James E. Sullivan one of the justices of the peace in and for the city of Muskegon in said county and severally and respectively acknowledged themselves to be indebted to the People of the State of Michigan in the sum of one hundred dollars to be levied on the respective goods and chattels, lands and tenements to the use of the said People if default shall be made in the conditions following:

Whereas, the said August G. Reetz was brought before me, the said justice of the peace, by virtue of a warrant duly issued by me on the 2nd day of November, 1900 upon the complaint and examination of Vincent O. Clinger on oath and in writing taken before me wherein the said Vincent O. Clinger complained that the said August G. Reetz on the first day of November, 1900, at the city of Muskegon in the said county of Muskegon did practice medicine in this State at, to wit: the city and county of Muskegon aforesaid, without first complying with the provisions of act number 237 of the Public Acts of the State of Michigan of 1899 being an act entitled "An act to provide for the examination, regulation, licensing and registration of physicians and surgeons, and for the punishment of offenders against this act, and to repeal acts and parts of acts in conflict therewith," in that the said August G. Reetz then and there did

practice medicine at the time and place aforesaid without having received a certificate of registration from the board of registration in medicine of the State of Michigan and without having filed the same, or a certified copy thereof, with the county clerk in the county where he, the said August G. Reetz did then and there reside, to wit: with the county clerk of said Muskegon county, the said August G. Reetz then and there not being a commissioned surgeon of the United States Army, Navy or Marine Hospital Service in actual performance of his official duty, and the said August G. Reetz,
7 then and there not being a regularly licensed physician or surgeon from out this State, in actual consultation with physicians of this State, and the said August G. Reetz then and there not being a dentist in the legitimate practice of his profession, and the said August G. Reetz then and there not being a temporary assistant in cases of emergency, and the said August G. Reetz then and there not being engaged in the domestic administration of family medicines and the said August G. Reetz then and there not being a legally qualified osteopath engaged in the practice of osteopathy under the provisions of act number 78 of the Public Acts of the State of Michigan of 1897 regulating and licensing the practice of osteopathy in the State of Michigan, contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan of which offense the said August G. Reetz after trial thereof, was duly convicted before me, the said justice, on this 12th day of November 1900, and was then and there sentenced therefor by me, the said justice, to pay a fine of fifty dollars within one hour and in default thereof that he be imprisoned in the common jail of Muskegon county for a period of seventy days from and including this 12th day of November, 1900; and whereas the said August G. Reetz appeals from said judgment and sentence so rendered by me to the circuit court for the county — Muskegon.

Now, therefore, the condition of this obligation is such that if the said August G. Reetz shall appear before the said circuit court for the said county of Muskegon on the first day of next term thereof and prosecute his said appeal at said term to effect, and abide the order and judgment of said circuit court, then this recognizance shall be void, otherwise in force.

AUGUST G. REETZ. [L. S.]
SAMUEL ROSENTHAL. [L. S.]

Subscribed and acknowledged the day and year first above written before me,

JAMES E. SULLIVAN,
Justice of the Peace.

I approve of said recognizance and of the sufficiency of the surety thereon,

Dated November 12th, 1900.

JAMES E. SULLIVAN,
Justice of the Peace.

8 *Bill of Exceptions.*

The Circuit Court for the County of Muskegon.

THE PEOPLE OF THE STATE OF MICHIGAN }
vs.
AUGUST G. REETZ, Defendant. }

At a session of said court held at the court-house in the city of Muskegon in said county, on, to wit: the 28th day of November, 1900, before the Hon. Fred J. Russell, judge of said circuit court, the issue joined between the parties came on to be tried by jury of said county duly tried and sworn for that purpose, the said People being represented by the prosecuting attorney for said county and the said defendant appearing in person and also by F. W. Cook, his attorney.

The said prosecuting attorney to maintain the aforesaid issue on his part, then called and had sworn as a witness, R. ANDREW FLEMMING, who testified as follows:

Direct examination by Mr. CROSS:

I am now and have been since January, 1897, county clerk of Muskegon county. I know the defendant. I am custodian and have in my possession the book wherein is recorded the certificates issued to physicians by the State board of registration in medicine.

Question by Mr. CROSS: Will you state whether or not the respondent has filed with you as county clerk a certificate authorizing him to practice or a certificate issued to him by the State board of registration in medicine.

Mr. COOK: I object to that, first, because it is not alleged in the warrant and complaint in what manner he practiced medicine, who he treated or how he did it. He is given no information as to what proof he may expect to meet. It is not specific enough.

The COURT: I will overrule the objection.

Mr. COOK: Give me an exception. I object to it for another reason, viz: that the law referred to in the warrant and complaint and under which the State board of registration in medicine is organized and under which it assumes to act is unconstitutional. It is in conflict with the Constitution of the United States.

The COURT: I will overrule the objection.

Mr. COOK: Give me an exception. I don't wish to object all the while therefore I object to any testimony being introduced for the same reason and also that the law of 1883 so far as it applies to this case is nugatory and void and the law of 1899 is also void and therefore the defendant is not required to comply with the requirements of the act.

The COURT: You may answer.

Mr. COOK: Give me the exception.

A. Dr. Reetz has filed no certificate issued to him by the State board of registration in medicine with me. Dr. Reetz the defendant resides in the city and county of Muskegon.

Q. You will state whether or not the respondent at one time applied to you for a certified copy of a certain affidavit which he had heretofore filed in your office which certified copy he procured for the purpose of presenting it to the State board of registration in medicine.

9 Mr. COOK: Now I understand that all of the testimony will be taken subject to the same objection and exception.

The COURT: Yes it will be so taken and you can have an exception to each piece of testimony.

A. He procured a certified copy of his registration under the former law. (Witness shown paper.) That is the certified copy of his affidavit which I made for him on the 16th day of November 1899. (Paper marked for identification "Exhibit A.")

Cross-examination by Mr. COOK:

That certified copy is a copy of the affidavit of Dr. Reetz filed with me under the law of 1883. He filed two affidavits with me under the law of 1883 the one I have mentioned and another as a student or undergraduate. The undergraduate affidavit was filed the 23d day of April, 1892.

Mr. COOK: I offer this undergraduate affidavit in evidence of a record as a part of my cross-examination.

Mr. CROSS: No objection.

It reads as follows: Medical practitioner's sworn statement. Received for record the 23d day of April A. D. 1892. Nellie Conklin, deputy county clerk.

STATE OF MICHIGAN, } ss:
County of Muskegon, }

I, August G. Reetz, do solemnly swear. 1. That I have been engaged in the study of medicine for two years and — months, at Muskegon, Mich. Am. Med. college, St. Louis Missouri, that I attended lectures at the medical college located at St. Louis Missouri, for — years and four months from ——, 18— to ——, 18—.

2. That I practiced under instructions of George S. Gordon residing at Muskegon who is legally qualified to practice under and by the provisions of this act. Signed A. G. Reetz, medical undergraduate.

Sworn and subscribed to before me this 23d day of April, A. D. 1892.

NELLIE CONKLIN,
Deputy County Clerk.

Mr. COOK: I now offer in evidence as a part of my cross-examination of this witness the record of the other affidavit of Dr. Reetz

and of which he procured a certified copy as mentioned by the witness.

The COURT: It will be received.

Mr. COOK: It reads as follows: "Medical practitioner's sworn statement. Received for record the 21st day of February, A. D. 1898. R. Andrew Fleming, county clerk."

STATE OF MICHIGAN, } ss:
County of Muskegon, }

I, August G. Reetz do solemnly swear.

1. That I am now engaged in the practice of medicine and surgery in the city of Muskegon in the county of Muskegon, and State of Michigan.

2. That I have been engaged in the continuous practice of medicine and surgery in the State of Michigan for seven years and — months.

3. That I am a graduate of Independent Medical College located at Chicago.

4. That I graduated in said medical college on the 18th day of February in the year of 1898. That I attended said medical college for five weeks.

5. That I belong to the regular school of medicine.

AUGUST G. REETZ,
Medical Practitioner.

Sworn and subscribed to before me this 21st day of February, A. D. 1898.

R. ANDREW FLEMING,
Notary Public in and for Muskegon County.

Redirect examination by Mr. CROSS:

This last sworn statement of Dr. Reetz was made on a blank partly printed, with blanks left to be filled in and instructions in fine type under the blanks showing how they should be filled, etc.

Mr. COOK: The same general objection that the law under which the prosecuting attorney is proceeding in this cause is unconstitutional.

The COURT: The objection is overruled and exception noted.

Mr. CROSS: I will read this later.

Recross-examination by Mr. COOK:

Q. The last affidavit of Dr. Reetz was filed February 21, 1898?

A. Yes sir.

Q. Under the law of 1883?

A. Yes sir.

Q. In the record book which you have for the recording of this affidavit, are other affidavits of other physicians recorded along about that time?

A. Yes, one on the next page, on the 24th of February, that of

Anton J. Jedlicka, and another on the 3rd of April, Charles W. Bunce, and another on the 22nd of June this same year, Thomas H. Goodman, and another on the 16th of July. It has been the practice of physicians since I have been in the clerk's office to file their affidavits under the 1883 statute, up to the time the act of 1899 took effect. When I say the act of 1883, I mean that act as amended by the act of 1887.

The said prosecuting attorney to further maintain and prove the action on his part, produced and had sworn as a witness, VINCENT O. CLINGER, who testified as follows:

Direct examination by Mr. CROSS:

I am deputy sheriff of the county of Muskegon and made the complaint against the respondent in this cause, whom I have known seven or eight years.

Q. You will state whether or not when the respondent was a witness in his own behalf on the trial before the justice, he stated to the court that he was practicing as a physician and had been for some considerable time before the complaint was made in this cause?

11 Mr. COOK: Now I object to that on the ground that there is no valid law of this State prohibiting his practicing. That the only laws in any way pretending to prevent his practicing medicine is the law of 1883 as amended by the law of 1887 and the law of 1899 and those laws we object to on the ground that they are unconstitutional and therefore he had a right to practice if he wanted to. We object to any other testimony in this case under this complaint and warrant because there is no offense set forth in it.

The COURT: You may answer.

Mr. COOK: Give me an exception.

A. Yes sir, he did. Dr. Reetz at the time I made the complaint had an office in the city of Muskegon on Western avenue between Jefferson and First streets. He had a sign hanging out over the sidewalk on Western avenue lettered "Dr. A. G. Reetz." That was a large gilt-lettered sign. At the time of the trial in justice court Dr. Reetz testified that he had made application to the State board of registration in medicine for a certificate of registration and that the board had returned his application with the money that he had sent as the fee.

The COURT: Mr. Cook, do you desire to have all this testimony taken under your objection?

Mr. COOK: Yes sir.

The COURT: It will be so considered. This testimony and that which is to follow?

Mr. COOK: Yes sir.

The COURT: It will be so considered and all will be taken under your objection and exception noted.

Witness proceeding: He also testified that with his application to the board for a certificate of registration he sent his diploma from the Independent Medical College of Chicago, Illinois which was also returned to him. When Dr. Reetz was testifying in the court below he identified this certified copy of his affidavit of 1898 and here marked "Exhibit A" as the certified copy he had sent the board. He also testified that the State board of registration in medicine had refused to register him and grant him a certificate of registra*tra*tion and said he had filed no certificate of registration with the county clerk of this county. He said the board had returned his papers to him with the one-dollar fee the last of October of this year. I do not remember the exact date but think it was the 27th.

Q. You may state whether during the time that the respondent was testifying as a witness to the court below his attention was called to the allegations in the complaint and warrant wherein it is averred that on the date in question he the said August G. Reetz then and there not being a commissioned surgeon of the United States Army, Navy or Marine Hospital Service in actual performance of his official duty and the other negative allegations in the warrant and complaint.

A. Yes sir.

Q. What did he say in regard to that?

A. He said he occupied none of those positions.

Q. In a word he admitted that all of the negative allegations in the warrant and complaint were true.

A. He did.

12 Cross-examination by Mr. COOK:

The defendant in the court below testified that before he filed with the county clerk his affidavit in February, 1898, before mentioned, he attended the American Medical College of St. Louis, Missouri about six months, that he then went to Chicago and attended the Independant Medical College of that city five weeks and there stood an examination by the board of examiners, passed examination and received his diploma. It was that diploma with the certified copy of the affidavit that was read here that he testified he forwarded in November last to the State board of registration in medicine at Lansing. The defendant has been in active practice here in the city of Muskegon for seven or eight years back, with his office on Western avenue, which he also testified to in justice court.

Redirect examination by Mr. CROSS:

The defendant in his testimony in justice court testified that for a number of years he practiced as an undergraduate, but he testified that he had been practicing as a regular physician since he received his diploma from Chicago, but he claimed he was a regular physician for several years.

Mr. CROSS: I desire at this time to read into the record Defend-

ant's "Exhibit A" being the certified copy of the affidavit of Dr. Reetz, of February 21st, 1898, which reads as follows:

Medical Practitioner's Sworn Statement.

STATE OF MICHIGAN, } ss:
County of Muskegon, }

I, August G. Reetz, (underneath that in parenthesis) is "given name in full," do solemnly swear:

1. That I am now engaged in the practice of medicine and surgery, (underneath in parenthe-s) is "insert here medicine or surgery, one or both as the case may be," in the city of Muskegon, in the county of Muskegon, State of Michigan. (Then between the lines in parenthe-s is, in fine type), "the preceding clause should be filled up only by those practicing in this State when the act took effect, September 6th, 1883."

2. That I have been engaged in the continuous practice of medicine and surgery (underneath in parenthesis), "medicine or surgery one or both as before," in the State of Michigan, for seven years and — months.

3. That I am a graduate of Independent, (underneath) "insert here the proper corporate name of the medical school," medical college located at Chicago.

4. That I graduated in said medical college on the 18th day of February in the year 1898.

5. That I attended said medical college five weeks.

6. That I belong to the regular school of medicine.

AUGUST G. REETZ,
Medical Practitioner.

Sworn and subscribed to before me this 21st day of February A. D. 1898.

R. ANDREW FLEMING,
Notary Public in and for Muskegon County.

13 STATE OF MICHIGAN, } ss:
County of Muskegon, }

I, R. Andrew Fleming, clerk of said county of Muskegon and clerk of the circuit court for said county, do hereby certify that I have compared the foregoing copy of medical practi-oner's sworn statement of August G. Reetz with the original record thereof now remaining in my office and that it is a true transcript therefrom and of the whole of such *of* final record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county this 18th day of November A. D. 1899.

R. ANDREW FLEMING, *Clerk.*

Mr. CROSS: With the seal of the court, ten-cent revenue stamp properly cancelled.

R. ANDREW FLEMING recalled and testified as follows:

As county clerk I have in my custody the original affidavit made by the defendant on the 21st day of February, 1898 which I now produce.

Mr. CROSS: I will have the same marked "Exhibit B" and I offer the same in evidence.

Mr. COOK: What is it you claim for this that is different from the record?

Mr. CROSS: Well I claim that this is different from the record in that there are certain clauses here in fine print which are instructions so to speak instructing how to fill out the blank and also to show that it is on a blank where the practitioner can make his affidavit as a legal practitioner or as a medical undergraduate in other words that this affidavit is made on a blank that is adapted to either case and that the blank for the medical practitioner is filled out, not however as I shall claim latter in accordance with the instructions or in accordance with the law.

Mr. COOK: You don't claim that the affiant there swore to those instructions, that they are a part of the affidavit.

Mr. CROSS: No sir, but I want to show just exactly the sort of an affidavit that was filed in toto—there can be no question but what it is competent—filed by this respondent.

Mr. COOK: I object to it as irrelevant and immaterial in view of the purpose for which the counsel wants to offer it.

The COURT: I will overrule the objection. You may put it in.

Mr. COOK: Give me an exception.

Mr. CROSS: It reads as follows:

Medical Practitioner's Sworn Statement.

STATE OF MICHIGAN, } ss:
County of Muskegon, }

I, August G. Reetz, (underneath in fine print) "give name in full," do solemnly swear.

1. I am now engaged in the practice of medicine and surgery, (underneath in parenthesis) "answer here medicine or surgery
14 one or both as the case may be," in the city of Muskegon in the county of Muskegon State of Michigan, (in parenthesis fine print) "the preceding clause should be filled up only by those practicing in this State when the law took effect September 6, 1883."

2. That I have been engaged in the continuous practice of medicine and surgery, (underneath) "medicine or surgery one or both as before," in the State of Michigan for seven years and — months.

3. That I am a graduate of Independent, underneath "here the proper corporate name of the medical school," medical college located at Chicago.

4. That I graduated from said medical college on the 18th day of February in the year of 1898.

5. That I attended said medical college five weeks.
6. That I belong to the regular school of medicine.

AUGUST G. REETZ,
Medical Practitioner.

(Underneath in print with appropriate blanks which have not been filled out or signed is this language): "If a student or undergraduate."

1. That I have been engaged in the study of medicine for — years and — months at ——.

2. That I attended lectures at the —— medical college located at —— for — years and — months on —— 18— to —— 18—. That I, (underneath answer here) "now" or "intend to" as the case may be, practice under instructions of —— —— residing at —— who is legally qualified to practice medicine under and by the provisions of this act.

—— —— (Signature.)
Medical Undergraduate.

Mr. CROSS: Then follows the jurat:

"Sworn and subscribed to before me the 21st day of February A. D., 1898.

R. ANDREW FLEMING,
Notary Public in and for Muskegon County."

On the back of which is endorsed the following:

Medical Practitioner's Sworn Statement.

August G. Reetz, M. D., of Muskegon.

CLERK'S OFFICE.

COUNTY OF MUSKEGON, *ss:*

Received for record the 21st day of February A. D. 1898 and recorded in Liber A of Medical Practitioners' Sworn Statements on page 202.

R. ANDREW FLEMING,
County Clerk.

The People rest.

Defense.

The defendant to maintain the issue on his part was sworn in his own behalf and testified as follows:

Examined by Mr. COOK:

I am the defendant in this case. I have resided in Muskegon twenty years. My business is that of a physician. I have been practicing as a veterinary surgeon and a physician eighteen years. I practiced as veterinary eighteen years ago. I have practiced as a physician since 1890. I quit veterinary ten years ago. I have an

office in the city of Muskegon and have had continuously
15 for ten years. My practice last year was worth about four thousand dollars. It has been a little better this year though I cannot state how much. I have not figured up my books yet. I filed the certified copy of affidavit spoken of in this case by the witnesses in November 1899. I made application to the State board of registration in medicine for registration and for a certificate thereof. Before I made application I received a circular from the secretary of the board instructing me to do it. I sent the secretary of the board one dollar for the fee and a certified copy of my registration with the county clerk here and my diploma from the Independent Medical College of Chicago, Illinois. The secretary returned the diploma on the 13th of February, 1900. They returned the diploma at that date with a card stating that they had returned my diploma and fee. The first notification I received from the board that they declined to register me, give me a certificate of registration was the last of October, 1900, about the 27th. I attended the Americal Medical College of St. Louis, Missouri from about the first of October, 1891 until the next spring about the middle of April, 1892, when I was called home on account of sickness. From that time until I attended the medical college of Chicago I practiced medicine in the city of Muskegon and studied. I attended as a student at the Independent medical college at Chicago five weeks. I stood an examination there with the class and passed an examination and received my diploma, and that was the diploma I sent to the State board.

Cross-examination by Mr. CROSS:

I haven't the diploma with me. It is framed and hangs up in my office.

Q. What did that diploma cost you?

A. The diploma cost me just the same as the college fees everywhere else.

Mr. COOK: Just answer the question.

Q. Read the question (question read).

—. Well, that didn't pay for the diploma, paid for my college —. It cost me about one hundred dollars.

Q. Was any part of that your board and expenses while in Chicago?

A. For college fees, matriculation fees, etc.

Q. What else?

A. And my traveling expenses there and back.

Q. How much was this matriculation fee?

A. Seventy-five dollars.

Q. Did you have to pay that before you went to Chicago?

A. Paid it when I went into the college.

Q. Paid it after you had got there, did you?

A. Paid it when I got there.

Q. What other fees did you pay?

A. I paid seventy-five dollars for college fees for a term of college, seventy-five dollars.

Q. Seventy-five dollars for a term in college?

A. Yes, sir.

Q. How long a term?

16 A. Well, I could stay out the full term if I wanted to. The term is five months and you have to pay fees for the full term when you enter.

Q. What especial qualifications, if any, are required of a man who goes there to take up a course of study in that school?

A. If a man from another college, show up that he had attended another college, show up his advanced standing he could go on the same course as he left off, just the same as any other school.

Q. Suppose a man went there, a man of average ability, and fair education, but with no medical education or training whatever, how long would it take him to complete the course?

A. That I cannot tell you. There is some of them been there four years.

Q. Are there lecturers in the college?

A. Yes, sir.

Q. They are not students, are they?

A. No, they get lecturers just the same as any other colleges.

Q. What I mean is these people that have been there four years are instructors in the college ar-n't they?

A. No, they are students.

Q. People who cannot learn?

A. Cannot learn.

Q. You were there five weeks, as I understand you?

A. Yes, sir.

Q. Attending lectures?

A. Yes, sir.

Q. Did you complete the course?

A. I completed my course.

Q. You know of instances where people have gone there and got their diplomas upon an attendance of one day?

A. No, sir, I don't.

Q. Now Doctor when did you commence to practice as a veterinary surgeon?

A. In 1878 up north of Cadillac.

Q. How long did you follow that as your business?

A. I followed it until 1890, when I quit entirely.

Q. When did you undertake to practice medicine first upon people?

A. I have stated that I practiced medicine on people and veterinary together for a number of years.

Q. When did you commence upon the active practice of medicine?

A. And quit veterinary?

Q. No.

A. Well, that was in 1884 when I commenced here in Muskegon.

Q. Had you taken any medicinal course anywhere at that time?

A. Yes, sir, as a veterinary I had.

Q. I am not speaking of a veterinary, I am speaking of a regular physician?

A. No, I studied under a preceptor before that as a physician.

Q. Who was that?

17 A. Dr. Brown in Iowa. The man is dead now.

Q. Where did he live?

A. He lived at that time in Grescoe, Iowa.

Q. You commenced, you say, in 1884?

A. Yes, sir, I commenced here in Muskegon in 1884.

Q. You were practicing as a veterinary then weren't you?

A. Yes, sir.

Q. That was almost exclusively your business wasn't it?

A. Well, I practiced the same as a physician and veterinary both.

The COURT: You say you practiced the same. Do you mean you used the same medicine?

A. Only reduced the medicine for patients. The medicine is the same.

Q. What I mean, is when did you cease to be a veterinary and become a physician?

A. In 1890 I ceased to be a veterinary.

Q. What steps, if any, did you take towards complying with the law of 1883 as amended by the law of 1887?

A. Well, I was a veterinary. The law did not describe what you should practice medicine on.

Q. On your qualifications as a veterinary you practiced on people as well?

A. I did. I got my advanced standing even in St. Louis in the college.

Q. I am not asking you anything about that. What was the first effort you made to comply with the law as you understood it, to qualify yourself as a physician?

A. In 1891 I was informed I would have to register, and I did.

Q. That is the first you knew about that, was it?

A. That is the first.

Q. Hadn't you ever read the law?

A. I had not read the medical law.

Q. You weren't practicing as a regular physician in 1890, 1891 or 1892, were you? You were practicing as an undergraduate?

A. In 1892 I registered under Dr. Gordon as an undergraduate.

Q. Read the question and see if I can get a- answer.

(Question read.)

A. I was not practicing as an undergraduate in 1890.

Q. In what capacity were you practicing in 1890?

A. Practicing as a physician.

Q. Then you were practicing as a regular physician in 1890? In 1891 you were practicing as an undergraduate?

A. I had not finished my studies up in the college. I was informed that I had better register as an undergraduate, that is why.

Q. And so you did?

A. Yes, sir.

Q. Do you remember the contents of that affidavit that you made? Just look at this record of it and see if you remember that that was the affidavit?

18 A. I didn't give in the four months, there it says four months, only, that is for 1892.

Q. You made this affidavit on the same kind of a blank that you made the second affidavit, that is to say, on the first affidavit you filled out the caption here, "State of Michigan, county of Muskegon, ss," and skipped the first blank, which applies to a medical practicioner, and filled out the one headed "for a student or undergraduate," and when you made the second one in 1898 you used the same kind of a blank, filling out the first one, leaving the second one blank, is that right?

A. Why, I guess so, the county clerk ought to know, he filled it out.

Q. He filled it out according to your instructions, did he not? You gave him the necessary information to enable him to fill it out?

A. I answered the questions that he asked me.

Q. Was this true, "That I have been engaged in the study of medicine for two years and — months at Muskegon, Michigan, American medical college, St. Louis, Missouri"?

A. Yes, sir.

Mr. COOK: If that clause appears in the affidavit in that way it evidently is not intended to be that way.

Mr. CROSS: That is a matter of construction later on.

Mr. COOK: Why ask the question if it is intended to deceive him to start with? That is a trick, Charlie.

Mr. CROSS: No trick about it. There is only one interpretation, he studied medicine in Muskegon and he studied medicine in St. Louis, Missouri. "2. That I attended lectures at the medical college, located at St. Louis, Missouri, for — years and four months." Is that true?

A. Yes, sir.

Q. That is all you attended at St. Louis, Missouri, wasn't it?

A. I attended there just one term, I didn't state the months.

Q. How many months were you there?

A. Well, as I told you I started there in September. The college opened the 28th day of September. I came home the middle of April.

Q. How many months is that?

A. Six months.

Q. "3. That I practiced under instructions of George S. Gordon residing at Muskegon, who is legally qualified to practice medicine under and by the provisions of this act." Was that true?

A. Yes, sir.

Q. You practiced under his instructions did you? Did you have an office with him?

A. We was in an office together.

Q. Where was it located?

A. It was located on Terrace street.

Q. Did you have patients that were independent of him?

A. Why, yes, I did.

Q. In what sense did you practice under his instructions?

19 A. Well, I practiced under his instructions, if anything was serious I would ask his advice.

Q. As a matter of fact this affidavit was made largely as a sort of cloak to enable you to go on and practice medicine without being able to come under the law as a regular physician, wasn't it?

A. Well, I don't know how you would make a cloak of it.

Q. Did you know what the provisions of the law of 1883 as amended by 1887 were at the time you made this affidavit?

A. Yes, sir, that you could practice medicine as an undergraduate under a preceptor, that is what the law was.

Q. Did you know that under the law of 1883 it was provided that an undergraduate might practice under the instructions of some regular physician, and that the law as amended in 1887 permitted an undergraduate to practice under the immediate supervision of a regular physician, did you know that?

A. No.

Q. Doctor, this paper that has been introduced in evidence and marked "People's Exhibit A" is the certified copy that you sent to this medical board, is it not?

A. Yes, sir.

Q. Have you any of the correspondence that passed between you and this medical board?

A. Not only that, I sent them my certificate.

Q. Have you any letters from them?

A. Not until October, 1900, I had a card from them the 13th of February, 1900, that they received my certificate, diploma and fees.

Q. And in the later part of October you received your diploma?

A. I received my diploma back in February.

Q. What did you receive in October?

A. They sent me a letter that my certificate and diploma was not accepted.

Q. Have you got that letter with you?

A. No. That is in the office, I had it in the lower court, you didn't call for it, so I didn't put it in my pocket again.

Q. Did you know at the time you made the medical practitioner's sworn statement on the 21st day of February, 1898, after you had received your diploma that portions of this affidavit were designed to be filled only by those who were practicing in 1883 at the time the law took effect?

A. No. I understood that any one getting a diploma from any legally chartered college had a right at any time to register with the county clerk, that is the way I understood it.

Q. How long did you continue to practice under Dr. Gordon?

20 A. I practiced under Dr. Gordon till in the fall of 1897, when I went away to Chicago.

Q. Then you attended this Independent medical college and obtained your diploma on the 18th day of February, 1898?

A. Yes, sir.

Q. And on the 21st day of February, three days later, you filed your medical practitioner's sworn statement with the county clerk?

A. Yes, sir.

Q. And then you supposed you were a full-fledged physician, if I may use that expression, didn't you?

A. Yes, sir.

Q. Now, Doctor, you spoke about receiving a circular of the law and certain instructions in reference to the manner in which an application should be made. Did you receive that circular and those instructions from this State medical board?

A. Yes, sir.

Q. I suppose that circular was something like that, wasn't it (showing witness paper) simply a copy of the act?

A. A copy of the act.

Q. Was there anything else?

A. Nothing only in the letter that they wrote that I should send to the secretary of State board my certificate and diploma.

The COURT: Have you ever made any application to the board for examination?

A. No sir.

Mr. CROSS: Have you examined this law, Doctor?

A. I did read it over.

Q. Under what provision of the law did you undertake to obtain registration or to obtain your certificate?

A. Well, it says that first the applicant shall be re-registered and given a certificate of re-registration if he shall present sufficient proof within six months after the passage of this act that he has already been legally registered.

Q. That is under the act of 1883 as amended by the act of 1887?

A. 1887 amended to promote public health, the fee for such applicant shall be one dollar.

Q. That is the only clause of this law and the only provision of the law under which you tried to obtain your certificate, wasn't it?

A. Yes sir.

Q. Do you know that where an applicant is not legally registered under the old law but is qualified to practice by reason of his graduation from some reputable medical college he may make his application and the fee is ten dollars?

A. Yes sir.

Q. You haven't made any effort at all to come under that provision of the law?

A. No.

21 Q. Not having succeeded in obtaining a certificate from the State board of registration in medicine, of course you did not file any with the county clerk of the county in which you reside?

A. No sir.

Q. That is to say, Muskegon county.

A. No.

Q. You were practicing medicine were you, on the first day of November of this year?

A. Yes sir.

Q. And had been from the time you had been notified by the secretary of the board that they had refused you or denied you a certificate?

A. Yes sir.

Q. And are still practicing, I suppose?

A. Yes sir.

Redirect examination by Mr. COOK:

Q. I did not just understand the situation perhaps over there in Chicago; you studied so long at the medical college at St. Louis, and five weeks at the Independent at Chicago?

A. Yes sir.

Q. Do I understand that you got credit at Chicago for what time you attended at St. Louis?

A. Yes sir.

Q. That is the way you were enabled to graduate so much sooner?

A. Yes sir.

Q. And also credit for whatever learning you had, that you had picked up in other ways mentioned before that?

A. Yes.

Q. So that you were able to pass the examination the same as the rest, is that right?

A. That is right.

Q. Do you know whether this board, I mean this medical board at Lansing has recognized as legal registrations under the law of 1883 similar affidavits to yours filed in 1898?

A. I know they have.

Q. Is this Independent college, or was it at the time you attended there, a regularly, legally organized, incorporated college?

A. Yes sir.

Q. Doing business as such?

A. Yes sir.

Recross-examination by Mr. CROSS:

Q. You know, also, do you not, Doctor, that this so-called medical college has no reputable standing anywhere, and especially in the State of Michigan?

A. It did at the time I was there, they were acknowledged in the State of Michigan anywhere.

Q. It is one of those institutions that sell diplomas and graduate most anybody who has the fee, and then when they are taken to task for it they will put in some instructors and have a regular course until they are recognized, and then begin to sell diplomas again?

A. That I cannot tell you, I don't know.

22 Q. How large a corps of *of* instructors are there at this Independent medical college, or were there when you were there?

A. There were nine.

Q. And how large a class or classes?

A. When I was there, there was about fifty.

Q. Had they all attended as long as you had or were they coming and going all the time?

A. Some of them had been there longer.

Q. Some of them hadn't been there so long?

A. And stayed there.

Q. Were there some that hadn't been as long?

A. Not that I know of, all those, they were there when I came there.

Q. Didn't you know of anybody coming and taking his examination, receiving his diploma and leaving during the time you were there?

A. No, not during the time I was there.

Q. You do know, don't you, that there is a man down at Kalamazoo by the name of Metcalf that attended one day and obtained his diploma and the said board of registration refused him a certificate?

A. I don't know that.

Q. You have heard of it, haven't you?

A. I have heard of it.

Q. You know that just as well as you know anything about the State board having issued a license, don't you?

A. No I don't.

Q. All you know about the State board having issued a license to anybody, is what you have heard, isn't it?

A. No their own statements, man's own statement.

Q. Whose own statements?

A. Those men that obtained license.

Q. It wasn't the statement of any member of the board, was it?

A. I have not talked with any members of the State board.

Q. Then all you know about anybody obtaining a license or a certificate from this board, this State board, or as to what they did in order to procure it, is what these parties who have the license or certificates have told you?

A. Oh, it shows on record where they filed their certificates they obtained it.

Q. Then you mean, do you Doctor, that there are physicians in this State, who, to your knowledge, have obtained certificates from the board and have filed them with the county clerk?

A. They have.

23 Q. In other words, they have complied with the law?

A. Well not any more than I have, they didn't go and take an examination.

Q. How do you know?

A. Well, I know that they issued certificates before the examination was called for.

Q. How do you know that?

A. Because the certificates on file show it.

Q. Do you know anything about the qualifications of these physicians who have obtained certificates in that way?

A. Their sworn statements with the county clerk.

Q. But you do know, don't you, that you are practicing medicine, and were on the dates charged in the complaint and warrant?

A. Yes sir.

Q. Without having complied with the law, this law requiring a registration and the procuring of a certificate, you know that you are doing that?

A. No, I complied with the law as the law reads; I don't know that I have not complied with the law.

Q. You mean, I suppose, that you tried to comply with the law and made your application?

A. Well I did.

Q. Do you also know that this same law provides that no person shall practice as a physician until he has obtained a certificate and filed it with the county clerk. You know that, don't you?

A. It don't say that. It says that you shall give sufficient proof that you have already been registered, that is as near as I can get the meaning of it.

Q. Did you know that section seven of this law provides that any person who shall practice medicine or surgery in this State, without first complying with the provisions of this act shall be deemed guilty of misdemeanor?

A. Yes, but I have complied with it, didn't I. Didn't I apply for my certificate?

Q. But you didn't get it, did you?

A. Well, I didn't get it.

Mr. CROSS: The People rest.

Mr. COOK: The defense rests.

Mr. COOK: I ask the court to direct the jury to return a verdict of not guilty on the ground that there is no offense charged in this warrant, no offense proven against this respondent, and on the further ground that the statute under which it is claimed this action is brought is unconsti-tional and void as being in conflict with the Constitution of the United States and the amendments thereto, especially section 1 of the 14th. That is all I care to say.

The COURT: I will overrule the motion.

Mr. COOK: Give me an exception.

Mr. CROSS: I will ask the court to instruct the jury that if they believe the uncontradicted testimony in the case, an offense has been established, and it will be their duty to find a verdict of guilty.

24 The COURT: In this case, gentlemen of the jury, if you believe the uncontradicted testimony in the case, it will be your duty to find the defendant guilty as charged. The presumption is that he is innocent of the crime charged and you should examine the evidence upon that basis and you should be satisfied beyond all reasonable doubt of his guilt before you would have a right to con-

vict and that doubt would be a fair honest doubt based upon reason and common sense, as I say, if you believe the undisputed testimony in the case it would be your duty to find a verdict of guilty.

Whereupon the jury retired under the charge of an officer duly sworn for that purpose to consider of their verdict to be given, and after being out for a time, returned into the court and through their foreman rendered a verdict of guilty as charged.

Whereupon, on motion of counsel for said respondent the time for settlement of a bill of exceptions before sentence has been extended from time to time until this day and,

Whereupon, on like motion, I have this day signed the foregoing bill of exceptions containing the substance of all material testimony given on said trial and the ruling relating thereto, and the exceptions thereon and the charge of the court to the jury, and I further certify that said bill of exceptions contains the testimony so given upon said trial in a narrative form, except in such instances as it appears necessary to set forth the same by way of questions and answers for the better understanding of the same.

Dated Muskegon, Michigan, this 13th day of December, 1900.

FRED J. RUSSELL,
Circuit Judge.

Assignment of Error.

STATE OF MICHIGAN, } ss:
County of Muskegon, }

The Circuit Court for the County of Muskegon.

THE PEOPLE OF THE STATE OF MICHIGAN }
vs.
AUGUST G. REETZ, Defendant. }

Now come the said defendant and appellant by F. W. Cook,
25 his attorney, and says that in the record and proceeding of the trial of said cause, there is manifest error in this viz:

First.

The court erred in overruling defendant's first objection to the following question put to the witness, Fleming, viz: "Will you state whether or not the respondent has filed with you, as county clerk, a certificate authorizing him to practice or a certificate issued him by the State board of registration in medicine?" and in receiving the answer of the witness thereto.

Second.

The court erred in overruling the defendant's second objection to the same question, and in receiving the answer of the witness thereto.

Third.

The court erred in overruling defendant's third objection to the same question and in receiving the answer of the witness thereto.

Fourth.

The court erred in receiving any testimony under the charge contained in the warrant against defendant's same objection to all testimony which was allowed by the court to apply to each piece of testimony and to each ruling defendant was allowed an exception.

Fifth.

The court erred in overruling defendant's objection to the following question of witness Clinger, viz: "You will state whether or not when the respondent was a witness in his own behalf on the trial before the justice he stated to the court that he was practicing as a physician and had been for some considerable time before the complaint was made in this cause?" and in receiving the witness' answer thereto.

Sixth.

The court erred in receiving any testimony in said cause against said defendant's objection, and which objection was by the court allowed to apply to all testimony thereafter taken and exceptions thereto duly noted.

Seventh.

The court erred in receiving in evidence the People's Exhibit B, against defendant's objection.

Eighth.

The court erred in refusing to direct a verdict of not guilty as requested by counsel for defendant at the close of the testimony.

Ninth.

The court erred in instructing the jury as follows, commencing with the words: "In this case, gentlemen of the jury," and ending with the words, "to find a verdict of guilty."

F. W. COOK,
Attorney for Defendant.

26 STATE OF MICHIGAN:

The Circuit Court for the County of Muskegon.

At a regular term of the circuit court for the county of Muskegon and held at the court-house in the city of Muskegon, on Wednesday, the twenty-eighth day of November, A. D. 1900.

Present: Hon. Fred J. Russell, circuit judge.

The court was opened for business in due form.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
AUGUST G. REETZ.

In this cause, the jury again sat together and after hearing the conclusion of the proofs and the allegations of the parties, and the

charge of the court, retired from the bar thereof under the charge of Vincent O. Clinger, an officer of court duly sworn for that purpose, to consider of their verdict to be given; and after being absent for a time, return into court and say upon their oath that they find the said August G. Reetz guilty in manner and form as the said People have in their information in this cause charged.

In this cause upon application of counsel for said defendant it is ordered by the court now here that further proceedings be and they are hereby stayed for a period of twenty days, to enable said defendant to settle a bill of exceptions or take such other steps as counsel may advise; the recognizance to remain in full force and effect.

FRED J. RUSSELL,
Circuit Judge.

Attest: R. ANDREW FLEMING, *Clerk.*

27 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the seventh day of May in the year of our Lord one thousand nine hundred and one.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE PEOPLE
vs.
AUGUST G. REETZ. } No. 18596.

This cause coming on to be heard is argued by Mr. Cross for the People and submitted on brief on the part of the defendant.

28 Supreme Court.

PEOPLE
vs.
AUGUST G. REETZ, Defendant.

Opinion.

Respondent was convicted of having practiced medicine without complying with act No. 237 of the Public Acts of 1899, entitled "An act to provide for the examination, regulation and registration of physicians and surgeons, and for the punishment for offenders against this act, and to repeal acts and parts of acts in conflict therewith."

The first act passed by the legislature of this State to regulate the practice of medicine and surgery, is act No. 167, Public Acts of 1883. This act was amended by act No. 268, Public Acts of 1887. Then followed the act of 1899, covering the entire subject and providing for a board of examiners. The act of 1899 is not different in principle from the other acts. If the act of 1883 was valid, then the act of 1899 is valid. Notwithstanding the former decision of this court,

in People *vs.* Phippin, 70 Mich., 6, counsel again attack the constitutionality of this legislation. That case settled the question against the contention of the respondent. See also People *vs.* Moorman, 86 Mich., 433. Counsel argue that such legislation is an interference with the inalienable right of a citizen when ill to employ anybody he chooses as his physician. This contention is not supported by authority or reason. The practice of medicine affects the public health, and it is clearly within the police power of the State to provide that those dealing with disease shall be amply qualified to do so, so far as human experience and education may qualify them. If this contention be adopted, then the law providing for the admission of attorneys to practice law is unconstitutional and void. This legislation has been almost universally sustained by the courts of other States and the Supreme Court of the United States. Among the cases are the following, which we cite without further comment:

State *vs.* Dent, 25 W. Va. 1—affirmed in Dent *vs.* West Virginia, 129 U. S. 114; State *vs.* Webster, 150 Ind. 607; 50 N. E. R. 750, and authorities there cited.

Conviction affirmed.

C. B. GRANT.
J. B. MOORE.
R. M. MONTGOMERY.
FRANK A. HOOKER.
CHAS. D. LONG.

(Endorsed:) Filed Jun- 4, 1901. Chas. C. Hopkins, clerk supreme court.

29 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the fourth day of June, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
vs.
AUGUST G. REETZ, Defendant. } No. 18596.

This cause having been brought to this court upon exceptions from the circuit court for the county of Muskegon, and the same and *and* the matters and proceedings therein having been seen and inspected and duly considered by the court, thereupon it is ordered that it be certified to said circuit court for the county of Muskegon, that there is no error in the rulings and proceedings therein, and that said circuit court forthwith enter judgment on the verdict.

30 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

AUGUST G. REETZ, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendants in Error.

To Horace M. Oren, attorney general of the State of Michigan, and Charles B. Cross, prosecuting attorney for Muskegon county, Michigan, attorneys for defendants in error:

Gentlemen, take notice:—

1. That the plaintiff in error above named feels aggrieved by the final judgment of the supreme court of the State of Michigan, made on the 4th day of June, 1901, affirming the judgment of the circuit court for the county of Muskegon, dated the 29th day of November, 1900, in the cause above entitled, and he avers that the same is erroneous and not in accordance with law and justice; and that he desires to have the same re-examined and reversed by the Supreme Court of the United States.

2. That he has duly made application and prayed for the allowance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Michigan for the re-examination of said judgment, and that such writ of error was duly al-
31 lowed on the 14th day of June 1901, by Hon. Robert M. Montgomery, chief justice of the supreme court of the State of Michigan.

3. That on the 14th day of June 1901, a writ of error duly issued out of the Supreme Court of the United States under the seal of the circuit court of the United States for the southern division of the western district of Michigan, and under the hand of the clerk of said circuit court, directed to the judges of the supreme court of the State of Michigan, commanding them to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, by the second Monday of October 1901, that, the same being inspected, the said Supreme Court might cause further to be done to correct the error complained of, what of right and according to the laws and customs of the United States, should be done; and said writ was on the 19th day of June, 1901, duly served upon and delivered to the clerk of said supreme court of the State of Michigan.

4. That on said 4th day of June 1901, a citation to the said People of the State of Michigan, defendants in error, was duly signed by said Robert M. Montgomery, chief justice of the State of Michigan, and that a copy of said citation is hereto annexed.

5. That the said plaintiff in error has executed a bond in due form in the penal sum of two hundred dollars with John D. Vander Werp and Sam Rosenthal as sureties, conditioned that if the said appellant shall prosecute his said writ of error to effect and answer all damages and costs, if he fail to make his plea good, then said obligation to be void, else to remain in full force and virtue; and

the same was duly approved by the said Robert M. Montgomery, chief justice as aforesaid, and is filed with the clerk of the supreme court of the State of Michigan.

32 6. Also take notice that the said plaintiff in error has duly prepared to be sent up with said writ of error a prayer for reversal and assignments of error, and that the copies respectively of said prayer for reversal and of said assignments of error are hereto annexed.

Dated, Grand Rapids, Michigan, June 19th 1901.

WILLIAM P. BELDEN,
Attorney for Plaintiff in Error.

Papers annexed are:—
1. Copy of citation.
2. Copy of prayer for reversal.
3. Copy of assignments of error.

33 UNITED STATES OF AMERICA, *ss:*

To the People of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Michigan wherein August G. Reetz is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert M. Montgomery chief justice of the supreme court of the State of Michigan, this fourteenth day of June, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of Michigan, Lansing.]

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of the State of Michigan.

34 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

AUGUST G. REETZ, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendants in Error.

Prayer for Reversal.

The plaintiff in error above named by William P. Belden, his attorney, avers that the final judgment of the supreme court of the State of Michigan made and entered on the 4th day of June, 1901, is erroneous and not in accordance with law and justice and would deprive plaintiff in error of his just rights in the premises, and he

feels aggrieved thereby and respectfully prays that the same be reversed and that the plaintiff in error may be discharged, and that he may be awarded his just costs.

Dated, Grand Rapids, Michigan, June 19th, 1901.

WILLIAM P. BELDEN,
Attorney for Plaintiff in Error.

35 UNITED STATES OF AMERICA :

In the Supreme Court of the United States.

AUGUST G. REETZ, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendants in Error.

Assignments of Error.

Now comes the said plaintiff in error, by William P. Belden, his attorney, and says that in the record and proceedings aforesaid and in the final judgment of the supreme court of the State of Michigan made on the fourth day of June, 1901, in this cause, there is manifest error in this, to wit :

The said supreme court of the State of Michigan erred—

First. In its said final judgment, in affirming the conviction of the plaintiff in error, by the circuit court for the county of Muskegon, whereby the plaintiff in error was convicted of a violation of act No. 237 of the Public Acts of the State of Michigan of 1899.

Second. In determining and deciding that "counsel argue that such legislation is an interference with the inalienable right of a citizen when ill to employ anybody he chooses as his physician. This contention is not supported by authority or reason."

Third. In affirming the conviction of the plaintiff in error by the circuit court for the county of Muskegon, although said circuit court committed manifest error in refusing to sustain the objection to the admission of testimony, made by counsel for the plaintiff in error and set out on page 5 of the record, on the ground that said act No. 237 of the Public Acts of the State of Michigan of 1899, is "in conflict with the Constitution of the United States."

36 Fourth. In affirming the conviction of the plaintiff in error by the circuit court for the county of Muskegon, although said circuit court committed manifest error in overruling the motion, made by counsel for plaintiff in error and set out on page 29 of the record, asking the court to direct the jury to return a verdict of not guilty on the ground that the statute under which the plaintiff in error was being prosecuted, was unconstitutional and void, as being in conflict with the Constitution of the United States, and the amendments thereto, especially section 1 of the 14th.

Wherefore the said plaintiff in error prays that the judgment of the supreme court of the State of Michigan aforesaid, for the errors aforesaid, may be reversed and annul-ed and altogether held for naught.

Dated June 19th 1901.

WILLIAM P. BELDEN,
Attorney for Plaintiff in Error.

37 STATE OF MICHIGAN, } ss:
County of Ingham, }

Arthur F. Dunnebacke of said county being duly sworn, deposes and says that on the 24th day of June 1901, at the city of Lansing in said county, he served upon Henry E. Chase, deputy attorney general for the State of Michigan, and attorney for The People of the State of Michigan, defendants in error in the cause entitled in the annexed notice, a notice, of which the annexed is a true copy; and annexed to said notice so served were true copies of the citation in this suit, dated June 14th, 1901, and of the prayer for reversal and of the assignments of error in said cause, the original citation and prayer and assignments of error being hereto annexed and filed together with this proof of service. Said service was made by delivering the aforesaid papers personally to said Henry E. Chase, deputy attorney general, who was in charge of the office of said attorney general.

ARTHUR F. DUNNEBACKE.

Subscribed and sworn to before me, this 24th day of June, A. D. 1901.

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

38 STATE OF MICHIGAN, } ss:
County of Muskegon, }

Frederick W. Buck, being duly sworn, deposes and says that on the 20th day of June, 1901, at the city of Muskegon, in said county, he served upon Charles B. Cross, prosecuting attorney for said county, and attorney for The People of the State of Michigan, defendants in error in the cause entitled in the annexed notice, a notice, of which the annexed is a true copy; and annexed to said notice so served were true copies of the citation in this suit dated June 14th, 1901, and of the prayer for reversal, and of the assignments of error in said cause, the original citation, prayer and assignments of error being hereto annexed and filed together with this proof of service. Said service was made by delivering the aforesaid papers personally to Charles B. Cross.

FREDERICK W. BUCK.

Subscribed and sworn to before me, this 20th day of June, 1901.

[Seal of Peter W. Losby, Notary Public, Muskegon Co., Mich.]

PETER W. LOSBY,
Notary Public, Muskegon County, Michigan.

38½ [Endorsed:] United States of America In the Supreme Court of the United States. August G. Reetz plaintiff in error, *vs.* The People of the State of Michigan defendants in error. Proof of service of notice &c. on att'ys for defendants in error. Filed June 24, 1901 Chas. C. Hopkins clerk supreme court of Michigan Wm. P. Belden attorney for plaintiff in error, 326, 327, 328 Houseman building, Grand Rapids, Michigan.

39 *Copy of Bond.*

Know all men by these presents, that we, August G. Reetz, of Muskegon, Muskegon county, Michigan, as principal, and John D. Vander Werp and Sam Rosenthal, as sureties, are held and firmly bound unto The People of the State of Michigan in the full and just sum of two hundred ($200) dollars to be paid to the said People of the State of Michigan, their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of June in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a hearing in the supreme court of the State of Michigan in a suit depending in said court, between The People of the State of Michigan as plaintiff and said August G. Reetz as defendant a final judgment was rendered against the said August G. Reetz and the said August G. Reetz having obtained a writ of error directed to said court from the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said supreme court of the State of Michigan to reverse the judgment in the aforesaid suit, and a citation directed to the said People of the State of Michigan citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said August G. Reetz shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

AUGUST G. REETZ. [SEAL.]
JOHN D. VANDER WERP. [SEAL.]
SAM ROSENTHAL. [SEAL.]

Sealed and delivered in presence of

BURT STINK.
JOHN M. GARREY.

Approved by—

R. M. MONTGOMERY,
Chief Justice of the Supreme Court of Michigan.

Endorsed: Filed June 26, 1901. Chas. C. Hopkins, clerk.

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Michigan, before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between The People of the State of Michigan as defendant in error and plaintiff, and August G. Reetz as defendant and plaintiff in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Consti-
41 tution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said August G. Reetz, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fourteenth day of June, in the year of our Lord one thousand nine hundred and one.

{ Seal of the U. S. Circuit Court, Western District of Mich., Southern Division. }

CHARLES L. FITCH,
Clerk U. S. Circuit Court, West. Dist. Mich.

Allowed by—
R. M. MONTGOMERY,
Chief Justice Supreme Court, Mich'n.

41½ [Endorsed:] Filed June 17, 1901 Chas. C. Hopkins clerk supreme court of Michigan.

The execution of the within writ appears by transcript of record hereto annexed.

Dated July 17, 1901.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

42 Supreme Court of the State of Michigan.

THE PEOPLE, Plaintiff and Defendant in Error,
vs.
AUGUST G. REETZ, Defendant and Plaintiff in Error.

STATE OF MICHIGAN, *Supreme Court,* } *ss:*

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court including the written decision and reasons therefor, signed by the judges of said court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with the allowance endorsed thereon, the citation, with proof of service thereof on the adverse party, and a bond to the adverse party, duly approved, together with the assignments of error in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this seventeenth day of July in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No. 18,236. Michigan supreme court. Term No. 143. August G. Reetz, plaintiff in error, *vs.* The People of the State of Michigan. Filed July 25", 1901.